

FILED
DEC 17 2007
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

1 BARRY SIMON JAMESON
2 CDCR No. C88511
3 Pleasant Valley State Prison
4 Post Office Box 8502
5 Coalinga, CA 93210-8502
6 No Phone, Fax nor E-mail
7 Institutional Telephone
8 (559) 935-4900
9
10 Petitioner,
11 Representing Self and
12 Layman at Law, Under
13 Disability of Imprisonment

14
15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
17
18 OAKLAND DIVISION

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1 MTD to address whether Petitioner has stated a prima facie case for
2 relief and to address the statute of limitations. Petitioner objects to
3 the continual filing of MTD, and states that he clearly has stated more than
4 a prima facie case for relief and clearly the statute of limitations is not
5 an issue for numerous reasons.

6 To briefly address these two claims, Petitioner begins with the claim
7 for relief. Respondent appears to be alleging that even if Petitioner was
8 held beyond his actual discharge date—as Petitioner has been—he would never
9 be entitled to say anything—ever—regarding the fact he is a human being in
10 prison after his entire sentence has expired, because under the AEDPA after
11 a year, a person so situated should simply accept that they are going to
12 spend the rest of their life imprisoned. This is a ludicrous concept.

13 Moreover, Petitioner's offense occurred in 1982. He was sentenced to
14 17 years for his Base Term—as Respondent agrees to in the Reply to Opposition
15 to MTD (2:13-14)—and a 5-year parole period. This is 22 years. He entered
16 the department of corrections in 1984, and his 22 years expired in 2006. He
17 filed in the State Court in 2006, and is now in this Court accordingly. It
18 is virtually impossible that Petitioner exceeded the one-year limit of the
19 AEDPA, as Petitioner waited until his discharge date, as it is clear in
20 California that for political reasons prison officials are heeding the State
21 Governor's agenda and not releasing anyone on early release, known as parole.
22 With parole a virtual impossibility under the policy, but not the law, Peti-
23 tioner filed his petition asserting that his parole period had now expired
24 and parole is a non-issue. The issue is discharge after a completed sentence,
25 which in Petitioner's view can never be time barred.

26 An illegal sentence is one "not authorized by the judgment of convic-
27 tion" or "in excess of the permissible statutory penalty for the crime."



1 United v. Vences, 169 F.3d 611, 613 (9th Cir. 1999) (quoting United States v.
2 Fowler, 794 F.2d 1446, 1449 (9th Cir. 1986), cert. denied 479 U.S. 1094, 107
3 S.Ct. 1309, 94 L.Ed.2d 153 (1987). A motion to correct an "illegal" sentence
4 may be made at any time. United States v. Mack, 494 F.2d 1204, 1207 (9th Cir.
5 1974).

6 Petitioner contends that his claim for relief clearly meets the prima
7 facie standard for review. In fact, if the Court imposed the law to the
8 facts as they are presented, the writ should issue. It is not even close.
9 The only way the Respondent has at this point of ignoring the law is to mis-
10 lead the Court into believing that Petitioner is pleading to be released on
11 parole, even though the five-year parole window has opened and closed.¹
12 "Parole" is defined as "early release to complete the balance of the sentence."
13 There is no "balance" left. The account is depleted, and some.

14 Therefore, the claim that there is no claim must fail, and the claim
15 that Petitioner has exceeded the one-year of the AEDPA is without merit, as
16 the petition is not only timely, but Petitioner is now an unsentenced person
17 in a United States prison for solely political reasons, completely unrelated
18 to the offense he was committed for and should have been released in 1992
19 on parole. He entered CDCR in his twenties after being told he would serve
20 15 years, plus 2 years of enhancements, and he was entitled to day-for-day
21 earned credits pursuant to California Penal Code §§ 2931/2933/2934. Half of
22 the 17 years (a little more because of county jail time) would have been in
23 approximately 1992. CDCR simply ignored the law and refused to issue Peti-
24 tioner his credits, refused to parole him, and now refuses to discharge him.
25 He has never been involved in any violence, absent being the victim of such in

26 1. There is a possibility, if Petitioner had been given parole, it could
27 have been extended for a parole violation for two years, but that is ques-
28 tionable and Petitioner was never paroled and given the opportunity to violate
parole.



1 prison from the guards and inmates alike, has a family, support, and every-
2 thing necessary to be successful in society. There is no legal or moral justi-
3 fication in his further imprisonment, nor is there any merit to any of Resp-
4 ondent's contentions to be able to file repeated motions to dismiss in this
5 Court.

6 Respondent is correct in asserting that Petitioner claimed he should
7 have been released—on parole—on his **Maximum Release Date** as the exhibits
8 show in the petition at issue in 1999; therefore, he had until 2000 to file
9 his petition. He did file a petition requesting to be released on "parole."
10 In 2000, the Federal Courts had never clarified whether California persons
11 had a protected Liberty Interest in parole. Not until McQuillion v. Duncan,
12 306 F.3d 895 (9th Cir. 2002), did the Ninth Circuit finally clarify that
13 California persons have a liberty interest in parole protected by the Federal
14 Constitution. Then, in 2003, the Ninth Circuit held in Brown v. Poole, 337
15 F.3d 1155, that a California sentencing Court that promises a person a speci-
16 fic amount of years in Court, as in the instant case, is bound by such a
17 promise, if the sentence is legal. Therefore, Respondent's attempt to have
18 the Court address the useless opportunity for parole in California for Peti-
19 tioner is nothing but a red herring argument that has nothing to do with the
20 issue before the Court, as aforementioned. Of course Petitioner should have
21 been released by law on 26 July 1999—as the statute mandates—on parole. It
22 seems Respondent, who has taken an oath to uphold the State and Federal Const-
23 itution and the law, should not be making a MTD, but a motion to release Pet-
24 itioner from his illegal custody; thus, illegal sentence. California law
25 defines a Maximum Release Date as the latest date a person can be held in
26 custody. California prison officials simply ignore their own statutes, and
27 the Attorney General's Office does whatever it takes to support their policies,
28



1 regardless of the statutes that use mandatory and unambiguous language.

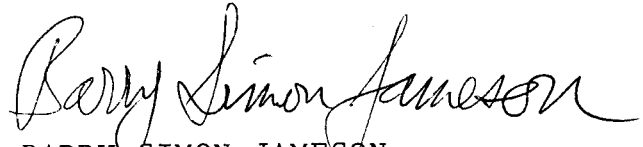
2 Petitioner is not delusional. He knows the Attorney General's intent is
3 not to mandate prison officials adhere to the statutes and regulations and
4 release Petitioner, but rather, to raise any claim valid or not to ensure
5 Petitioner remains imprisoned. He has lived the experience for too long to
6 believe in anything else from State officials. The request to file a MTD is
7 based on meritless claims, as Petitioner made it abundantly clear that he
8 should be discharged and parole was a non-issue. Respondent filed a motion to
9 dismiss, and then submitted that it was meritless. Respondent should be
10 required to file an Answer to the petition, and should somehow be required to
11 explain how it is possible that as an officer of the Court and of the State
12 they have been ignoring State law for over a decade, almost two now, for per-
13 sons similarly situated as Petitioner.

14 CONCLUSION

15 For all the foregoing reasons, especially because the Respondent has
16 already filed a motion to dismiss and conceded it is meritless, any further
17 motion to dismiss should not be entertained, as the merits and AEDPA issues
18 raised by Respondent in their Reply to Opposition to Motion to Dismiss are
19 themselves meritless and time consuming. They should Answer the petition.

20 11 December 2007

21 Respectfully submitted,

22 

23 BARRY SIMON JAMESON
24 Petitioner,
25 Representing Self and
26 Layman at Law, Under
27 Disability of Imprisonment

28 xc All Parties
:bsj

Jameson v. Yates

C07-03160 SBA

VERIFICATION

I declare under penalty of perjury that the foregoing is true, and that this document was executed in Coalinga, California on the date below.

11 December 2007

Date



Barry S. Jameson
Verifier/Plaintiff/Petitioner

* * * * *

PROOF OF SERVICE BY MAIL ¹.

I declare that I am **not a party**, am over the age of twenty-one years, my correct address is 24863 W. Jayne Avenue, Coalinga, CA 93210 (telephone number (559) 935-4900), and on the date below I served a document(s) titled:

PETITIONER'S RESPONSE TO RESPONDENT'S REPLY TO MOTION TO DISMISS AND REQUEST TO CONTINUE FILING MOTIONS TO DISMISS IN LIEU OF AN ANSWER TO THE PETITION FOR WRIT OF HABEAS CORPUS

on the party(s) named below by placing such document(s) into a sealed, postage-paid envelope, and placing them into the United States Postal Service mail system with first class mail attached thereto, addressed as:

ELIZABETH S. KIM
Deputy Attorney General
State of California
455 Golden Gate Avenue
Suite 11000
San Francisco, CA 94102-7004
Attorney for Respondent YATES.

12 December 2007

Date

JEFF ROE

Printed/Typed Name


Signature

1. Service on date placed into the mail, pursuant to the Prison Mailbox Rule. (See Houston v. Lack, 487 U.S. 266, 275-76 (1988), and Cal. Rules. Ct., Rules 8.304 and 8.400.)

B. Jameson C88511
(82-1194) P.O.B. 8502
COALINGA, CA
93210-8502

CLERK OF THE
U.S. DISTRICT COURT
NORTHERN DISTRICT OF
CALIFORNIA
OAKLAND DIVISION
1301 CLAY STR. #400
OAKLAND, CA
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